

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL****FOR: HEALTH CARE FINANCING ADMINISTRATION**TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

1. TRANSMITTAL NUMBER:

04-11

2. STATE

Louisiana3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE

April 21, 2004

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR 433.36

7. FEDERAL BUDGET IMPACT:

a. FFY **2004****\$*** Refer to Block 23b. FFY **2005****\$*** Refer to Block 23

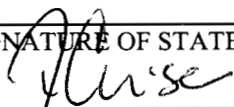
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Pre-print Page 53**Attachment 4.17, Pages 1, 2, 2a**9. PAGE NUMBER OF THE SUPERSEDED PLAN
SECTION OR ATTACHMENT (If Applicable):**Same (TN 95-48)****Same (TN 95-48)**10. SUBJECT OF AMENDMENT: **The purpose of this amendment is to revise the Medicaid estate recovery policy.**

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL☒ OTHER, AS SPECIFIED:**The Governor does not review state plan material.**

12. SIGNATURE OF STATE AGENCY OFFICIAL:



13. TYPED NAME:

Frederick P. Cerise, M.D., M.P.H.

14. TITLE:

Secretary

15. DATE SUBMITTED:

June 18 2004

16. RETURN TO:

**State of Louisiana
Department of Health and Hospitals
1201 Capitol Access Road
PO Box 91030
Baton Rouge, LA 70821-9030****FOR REGIONAL OFFICE USE ONLY**17. DATE RECEIVED: **22 JUNE 2004**18. DATE APPROVED: **22 JULY 2004****PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL:

21 APRIL 2004

20. SIGNATURE OF REGIONAL OFFICIAL:



21. TYPED NAME:

ANDREW A. FREDRICKSON

22. TITLE:

**ASSOCIATE REGIONAL ADMINISTRATOR
DIV OF MEDICAID & CHILDREN'S HEALTH**

23. REMARKS:

It is not feasible to estimate the fiscal impact of this amendment due to the lack of essential data including the amount of the Medicaid expenditures made for recipients subject to this amendment and the value of their estates which may be recoverable.

Revision: HCFA-PM-95-3 (MB)
MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: LOUISIANACitation

42 CFR 433.36(c)
1902(a)(18) and
1917(a) and (b) of
the Act

4.17 Liens and Adjustments or Recoveries(a) Liens

_____ The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFR 433.36(c)-(g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

_____ The State imposes liens on real property on account of benefits incorrectly paid.

_____ The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (NOTE: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)

_____ The State imposes liens on both real and personal property of an individual after the individual's death.

STATE <u>Louisiana</u>	A
DATE REC'D <u>6-18-04</u>	
DATE APP'VD <u>7-22-04</u>	
DATE EFF <u>4-21-04</u>	
HCFA 179 <u>04-11</u>	

SUPERSEDES TN 95-48 ** Narrative explanation provided in Attachment 4.17-A, page 1

TN No. 04-11
Supersedes
TN No. 95-48

Approval Date 7-22-04Effective Date 4-21-04

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: LOUISIANA

LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

NOT APPLICABLE

SUPERSEDES TN 95-78

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter ~~provided care as specified~~ under regulations at 42 CFR §433.36(f):

NOT APPLICABLE

STATE	<u>Louisiana</u>
DATE RECD	<u>6-18-04</u>
DATE APPROV	<u>7-22-04</u>
DATE EFF	<u>4-21-04</u>
HCFA 179	<u>04-11</u>

A

3. The State defines the terms below as follows:

- o estate - is defined as the gross estate of the deceased as determined by Louisiana succession law and any interest in any property, whether movable or immovable, corporeal or incorporeal that the recipient had 36 months prior to his death.
- o individual's home - is defined as the primary place of residence of the deceased recipient prior to entry into a nursing facility and on which homestead exemption was claimed.
- o equity interest in the home -
NOT APPLICABLE
- o residing in the home for at least one or two years on a continuous basis, and
NOT APPLICABLE
- o lawfully residing.
NOT APPLICABLE
- o Heir - An heir is a descendant in the first degree.
- o Privilege - is defined under Louisiana Civil Code Article 3168 as a right, which the nature of a debt gives to a creditor, and which entitle him to be preferred before other creditors, even those who have mortgages. LSA-R.S. 46:153.4 grants to the Department of Health and Hospitals a privilege equivalent to an expense of last illness as prescribed in Civil Code Article 3252 et seq. The Department does not impose liens on the property of Medicaid recipients. At the time of death and notification to a family member, attorney or legal representative, the Department acquires a privilege on the succession of the deceased Medicaid recipient. The use of privilege allows the Department to recover from the entire succession of the deceased Medicaid recipient and not just from their homestead.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: LOUISIANA

4. The State defines undue hardship as follows: Compelling circumstances which would result in placing an unreasonable burden on surviving spouse and/or an heir; and if an heir's family income is 300 percent or less of the U.S. Department of Health and Human Services Federal Poverty Level Guidelines as published annually in the *Federal Register*. Undue hardship may be considered to exist in situations wherein:

- 1) The estate is the sole income-producing asset of an heir and income is limited (e.g., a family farm or other family business which produces a limited amount of income when the farm or business is the sole asset of the survivors);
- 2) Recovery would result in an heir becoming eligible to receive public assistance, including but not limited to Medicaid;
- 3) Any other compelling circumstances that would result in placing an unreasonable burden on an heir.

Undue hardship does not exist if the individual created the hardship by resorting to estate planning methods under which the individual divested assets in order to avoid estate recovery. It is the obligation of the heirs to prove undue hardship by a preponderance of evidence.

If the individual obtained estate planning advice from legal counsel and followed this advice, the resulting financial situation does not qualify for an undue hardship waiver.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

Upon receipt of waiver of estate recovery based on claim of hardship, the Bureau will allow thirty (30) days for receipt of hardship documentation from executor/legally authorized representative or heir.

Upon receipt of the required documentation of hardship, the Bureau will review the documentation and make a determination of whether undue hardship does in fact exist;

If it is determined that undue hardship does not exist, the Bureau will notify the legally authorized representative or heir of the determination and of the right to appeal.

The waiver determination hearing and appeal request will be processed by the Department of Health and Hospitals, Bureau of Appeals.

The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

The Medicaid agency balances and weighs that which it may reasonably expect to recover against the costs in legal time and litigation associated with the recovery process. Recovery would not be considered cost effective when the estate consists of \$1000 or less. Recovery is deemed to be cost effective when the amount reasonably expected to be recovered exceeds the cost of recovery by an amount equal to or greater than \$1000.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

TN No. 04-11
Supersedes
TN No. 95-48

Approval Date 7-22-04

Effective Date 4-21-04

SUPERSEDED BY 95-78

STATE Louisiana
DATE RECD 6-19-04
DATE APPVD 7-22-04
DATE EFF 4-21-04

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: LOUISIANA

- 1) The Bureau mails advance notice advising executor/legally authorized representative or heir of intent to recover. The notice must include: a) the deceased recipient's name, social security number, and Medicaid identification number; b) the action the State intends to take; c) the reason for the action; d) the dates of services associated with the recovery action and the amount of the department's claim, i.e., amount to be recovered against the recipient's estate; e) the heirs' right to a hearing; f) the method by which the heirs may obtain a hearing; g) the right to and procedure for applying for a hardship waiver; and h) the time periods involved in requesting a hearing or in exercising any procedural requirements under the Medicaid Estate Recovery Program.
- 2) From receipt of the advance notice, the Bureau allows the executor/legally authorized representative or heir thirty (30) days for receipt of the hardship waiver application with documentation supporting the request.
- 3) From receipt of the advance notice, the Bureau allows the executor/legally authorized representative or heir twenty (20) days to submit a written request for an informal appeal with documentation that demonstrates the determination was made in error.
- 4) The Bureau allows the executor/legally authorized representative or heir fifty (50) days to submit a written request for an administrative appeal regarding agency decisions.
- 5) The Bureau submits all required documentation to Bureau staff or its designee responsible for making a determination of hardship, informal appeal, or administrative appeal.
- 6) The Bureau notifies executor/legally authorized representative or heir of determination of requests for hardship waiver, informal appeal, or administrative appeal within forty-five (45) days of receipt of all required documentation.

SUPERSEDES TN 95-48

STATE	<u>Louisiana</u>
DATE RECD	<u>6-18-04</u>
DATE APPEAL	<u>7-22-04</u>
DATE EFF	<u>4-21-04</u>
HCFA 175	<u>04-11</u>

TN No. 04-11
Supersedes
TN No. 95-48

Approval Date 7-22-04

Effective Date 4-21-04